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referred or transmitted to committee.

Chief Clerk of the House

By: Robert R. Proulx

FILED MAR 09 2005

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district
against landowners whose land is enrolled or participating in a
federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding
Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation
Reserve Program of the United States Department of Agriculture, or
any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as
follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and
rights of the owners of the land and their lessees and assigns in
groundwater are hereby recognized, and nothing in this code shall
be construed as depriving or divesting the owners or their lessees
and assigns of the ownership or rights, except as those rights may
be limited or altered by rules promulgated by a district. A rule
promulgated by a district may not discriminate between owners of
land that is irrigated for production and owners of land or their
lessees and assigns whose land is enrolled or participating in a
federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to
read as follows:

1 (a) A district may make and enforce rules, including rules
2 limiting groundwater production based on tract size or the spacing
3 of wells, to provide for conserving, preserving, protecting, and
4 recharging of the groundwater or of a groundwater reservoir or its
5 subdivisions in order to control subsidence, prevent degradation of
6 water quality, or prevent waste of groundwater and to carry out the
7 powers and duties provided by this chapter. During the rulemaking
8 process the board shall consider all groundwater uses and needs and
9 shall develop rules which are fair and impartial and that do not
10 discriminate between land that is irrigated for production and land
11 enrolled or participating in a federal conservation program. Any
12 rule of a district that discriminates between land that is
13 irrigated for production and land enrolled or participating in a
14 federal conservation program is void.

15 SECTION 4. Section 36.113, Water Code, is amended by adding
16 Subsections (h), (i), and (j) to read as follows:

17 (h) In issuing a permit for an existing or historic use, a
18 district may not discriminate between land that is irrigated for
19 production and land or wells on land enrolled or participating in a
20 federal conservation program.

21 (i) A permitting decision by a district is void if:

22 (1) the district makes its decision in violation of
23 Subsection (h); and

24 (2) the district would have reached a different
25 decision if the district had treated land or wells on land enrolled
26 or participating in a federal conservation program the same as land
27 irrigated for production.

1 (j) On the application of an affected owner of land or the
2 owner's lessee or assigns, the district shall reconsider a decision
3 that is void under Subsection (i) and base its decision on the equal
4 treatment of land or wells on land enrolled or participating in a
5 federal conservation program and land that is irrigated for
6 production. Not later than the 90th day after the date the district
7 receives an application under this subsection, the district shall
8 render its decision and notify the applicant of its decision.

9 SECTION 5. Not later than the 90th day after the effective
10 date of this Act, a groundwater conservation district shall amend
11 to bring into compliance with Sections 36.002 and 36.101(a), Water
12 Code, as amended by this Act, any rule enacted before the effective
13 date of this Act that is void under Section 36.101(a), Water Code,
14 as amended by this Act.

15 SECTION 6. This Act takes effect September 1, 2005.

PUBLISHER'S AFFIDAVIT

STATE OF TEXAS
COUNTY OF UPTON

Before me, the undersigned authority, on this day personally appeared _____

Clara Greer the editor of the McCAMEY NEWS,

a newspaper having general circulation in Upton County, Texas, who being by

me duly sworn, deposes and says that he foregoing attached notice was pub-

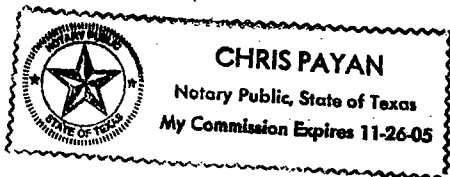
lished in said newspaper on the following date(s), to wit:

Thursday, January 20, 2005

Clara Greer
Clara Greer

Subscribed and sworn to before me this 21st day of January, 2004

to certify which witness my hand and seal of office.



Chris Payan
Chris Payan, Notary Public, State of Texas
My Commission expires 11/26/05

CLASSIFIEDS

SERVICES

MCCAMEY REBEKAH LODGE
#169 HALL on East 5th Street.
Meet Thursday, October through
March at 7:30 p.m. and April
through September at 8:00 p.m.

MTFC

28 2005.

M 3 & 4

Request for proposal

The City of McCamey is request-
ing proposal for construction of
fence around a 20 acre parcel of
land.

Anyone interested in submitting
proposal to build fence is requested
to pick up copy of specifications and
drawing of location at City hall, 207
E. 6th Street, McCamey, Texas.

Proposal will be due in the office
of the City Secretary by 5:00
p.m. Wednesday, February 9, 2005.

s/Lou Ann Watson
City Secretary

M 3 & 4

SHOP McCAMEY FIRST

HELP WANTED

WANTED: Part-Time CNA's must
be certified and must be able to
work all shifts. If interested please
contact Penny @ 652-8628 Mc-
Camey Convalescent Center. MTFC

benefits, very competitive wage,
401-K (Company Match), medical
and dental, paid holidays, safety
incentives and potential yearly
performance bonuses. Apply in
person at 107 Highway 67 West, Big
Lake District Office or Contact Mike
Vargas at 325-884-2725 or 1-877-
223-6297. Plains Marketing, LP is
an Equal Opportunity Employer

M32TFC

Help Wanted: McCamey
Convalescent Center needs a full
time LVN, must be able to work
holidays, weekends and all shifts.
Please contact Penny Crossland or
Trena Kneupper at 432-652-8628.

Help us meet our deadline.

Turn in your news
by Tuesday - NOON.

FOR SALE

FOR SALE: approximately 5,000
cubic yards of crushed caliche, East
6th Street, McCamey. Call Troy
Jones (mobile) 631-0617, office 332-
0721.

M51TFC

Angelo Standard Times, \$500 per
month. Contact Darrell Perry, 325-
659-8296

M 3- 6

Notice of Intention: to introduce a bill to amend the authority of Upton County Water District as follows:

To amend Acts of the 65th Leg-
islature, of the State of Texas, by
adding Section 8A to read as fol-
lows:

Sec. 8A. The Upton County
Water District has the powers and
duties authorized by Subchapter D,
Chapter 36 Water Code.

Upton County Water District
shall continue to have the powers
initially granted as a conservation
district under Article XVI, Sec. 59
of the Texas Constitution under pro-
visions provided by H.B. 2180 of the
65th Texas Legislature Regular Ses-
sion in 1977.

Under provisions of this proposed
legislation, the current board of di-
rectors for Upton County Water Dis-
trict will continue to serve.

All provisions of the initial act
creating Upton County Water Dis-
trict will continue to apply, with the
addition of the powers and duties
authorized by Subchapter D, Chap-
ter 36 of the Texas Water Code.

This Notice is authorized by the
Board of Directors of Upton County
Water District.

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10:00 a.m.
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Survive

Anglin, of
Charles M
Aprile, of
Anglin and

Tennessee
wife, Wyn
K. Anglin,
H. Anglin,

APPLIC

Thank You

The family of Carrol Bolen would like
to extend our deepest appreciation for
the flowers, cards, food, thoughts, and
prayers during our time of loss. May
God bless each one of you.

Sincerely,

Willadean Bolen, Kyle & Velinda
Bolen and family, Lynette & Greg
Watson and family, Leland & Katie

HOUSE COMMITTEE REPORT

1st Printing

05 APR 17 PM 8:59
HOUSE OF REPRESENTATIVES

By: Puente

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

1 (a) A district may make and enforce rules, including rules
2 limiting groundwater production based on tract size or the spacing
3 of wells, to provide for conserving, preserving, protecting, and
4 recharging of the groundwater or of a groundwater reservoir or its
5 subdivisions in order to control subsidence, prevent degradation of
6 water quality, or prevent waste of groundwater and to carry out the
7 powers and duties provided by this chapter. During the rulemaking
8 process the board shall consider all groundwater uses and needs and
9 shall develop rules which are fair and impartial and that do not
10 discriminate between land that is irrigated for production and land
11 enrolled or participating in a federal conservation program. Any
12 rule of a district that discriminates between land that is
13 irrigated for production and land enrolled or participating in a
14 federal conservation program is void.

15 SECTION 4. Section 36.113, Water Code, is amended by adding
16 Subsections (h), (i), and (j) to read as follows:

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18 district may not discriminate between land that is irrigated for
19 production and land or wells on land enrolled or participating in a
20 federal conservation program.

21 (i) A permitting decision by a district is void if:

22 (1) the district makes its decision in violation of
23 Subsection (h); and

24 (2) the district would have reached a different
25 decision if the district had treated land or wells on land enrolled
26 or participating in a federal conservation program the same as land
27 irrigated for production.

1 (j) On the application of an affected owner of land or the
2 owner's lessee or assigns, the district shall reconsider a decision
3 that is void under Subsection (i) and base its decision on the equal
4 treatment of land or wells on land enrolled or participating in a
5 federal conservation program and land that is irrigated for
6 production. Not later than the 90th day after the date the district
7 receives an application under this subsection, the district shall
8 render its decision and notify the applicant of its decision.

9 SECTION 5. Not later than the 90th day after the effective
10 date of this Act, a groundwater conservation district shall amend
11 to bring into compliance with Sections 36.002 and 36.101(a), Water
12 Code, as amended by this Act, any rule enacted before the effective
13 date of this Act that is void under Section 36.101(a), Water Code,
14 as amended by this Act.

15 SECTION 6. This Act takes effect September 1, 2005.

H.B. No. 2423

1 COMMITTEE AMENDMENT NO. 1

2 Amend H. B. 2423 by deleting SECTION 5.

3 Hilderbran

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

4/7/05
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES

to whom was referred HB 2423 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
- ☒ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Puente, Chair	X			
Callegari, Vice-chair	X			
Bonnen	X			
Campbell	X			
Geren	X			
Hardcastle	X			
Hilderbran	X			
Hope	X			
Laney	X			

Total 9 aye
 0 nay
 0 present, not voting
 0 absent

Not Present
CHAIR

BILL ANALYSIS

H.B. 2423
By: Puente
Natural Resources
Committee Report (Amended)

BACKGROUND AND PURPOSE

Most states treat farms participating in federal conservation programs as "active" for purposes of farm program benefits. In Texas, however, some groundwater districts treat farms participating in federal conservation programs as inactive for the purpose of issuing permits based on historic use. H.B. 2423 prohibits a groundwater conservation district from discriminating against a farm participating in a federal conservation program, such as the U.S. Department of Agriculture's (USDA's) Conservation Reserve Program.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Defines "federal conservation program" as the Conservation Reserve Program of USDA, or any successor program.

SECTION 2. Amends Section 36.002, Water Code, to prohibit a groundwater district from promulgating rules that discriminate between owners of land irrigated for production and owners, lessees, or assignees of land participating in a federal conservation program.

SECTION 3. Amends Section 36.101(a), Water Code, to specify that a district, in making rules limiting groundwater production, may not develop rules that discriminate between land irrigated for production and land participating in a federal conservation program. The section also specifies that any district rule discriminating between land irrigated for production and land participating in a federal conservation program is void.

SECTION 4. Amends Section 36.113, Water Code, to prohibit a district from discriminating between land irrigated for production and land participating in a federal conservation program in issuing a permit for an existing or historic use. The section also specifies that a permitting decision by a district is void if:

- the district makes a permitting decision that discriminates between land irrigated for production and land participating in a federal conservation program; and
- the district would have reached a different decision if it had treated land participating in a federal conservation program the same as land irrigated for production.

The section requires that, upon application by an affected landowner, lessee, or assignee, a district must reconsider a decision rendered void under Section 36.113(i), Water Code and base its decision on the equal treatment of land participating in a federal conservation program and land irrigated for production. The district must render its reconsidered decision and notify the applicant within 90 days of receiving the application.

SECTION 5. Deleted by Committee Amendment No. 1.

EFFECTIVE DATE

H.B. 2423 takes effect on September 1, 2005.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 modified H.B. 2423 by deleting a provision that would have required a groundwater conservation district to amend any rules enacted before the bill's effective date that become void under the bill.

SUMMARY OF COMMITTEE ACTION

HB 2423

March 30, 2005 8:00AM

Considered in public hearing

Testimony taken in committee (See attached witness list.)

Left pending in committee

April 7, 2005 upon first adjournment

Considered in formal meeting

Amendment(s) considered in committee

Reported favorably as amended

3

WITNESS LIST

HB 2423
HOUSE COMMITTEE REPORT
Natural Resources Committee

March 30, 2005 - 8:00AM

For: Howe, Billy (Texas Farm Bureau)
 Kelly, Mary E. (Environmental Defense)
 Lynch, William (Self)
Against: Bramblett, C.R. Kit (Self and Hudspeth County)
 Davis, Tally (Self and Huspeth County Underground Water
 Conservation District #1)
 Snodgrass, Lindsay (Self and Huspeth County Water
 District)
 Townsend, Lambeth (CL Machinery Company)
 Williams, CE (Panhandle Groundwater District)

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 12, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.),
Committee Report 1st House, As Amended

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

5

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 24, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), As Introduced

No fiscal implication to the State is anticipated.

Local Government Impact

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Source Agencies:

LBB Staff: JOB, WK, DLBa

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LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB2423-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Puente	Amendment	Adopted



ADOPTED

FLOOR AMENDMENT NO. 1

APR 25 2005

BY: PuenteChief Clerk
House of Representatives

Amend H.B. 2423 as follows:

(1) On page 2, line 16, strike "(h), (i), and (j)" and substitute "(h) and (i)".

(2) On page 3, strike lines 1-8.

(3) On page 3, line 10, strike "a groundwater conservation district" and substitute "the Hudspeth County Underground Water Conservation District No. 1".

(4) On page 3, between lines 14 and 15, insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION 6. (a) Except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a groundwater conservation district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) The changes in law made by this Act apply to:

(1) an application filed with the Hudspeth County Underground Water Conservation District No. 1 that is pending on the effective date of this Act; or

(2) a permit decision by the Hudspeth County Underground Water Conservation District No. 1 that is not final on the effective date of this Act.

fa1hb2423

F

2ND READING
ENGROSSMENT

By: Puente

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

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SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

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2 limiting groundwater production based on tract size or the spacing
3 of wells, to provide for conserving, preserving, protecting, and
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6 water quality, or prevent waste of groundwater and to carry out the
7 powers and duties provided by this chapter. During the rulemaking
8 process the board shall consider all groundwater uses and needs and
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26 or participating in a federal conservation program the same as land
27 irrigated for production.

1 SECTION 5. Not later than the 90th day after the effective
2 date of this Act, the Hudspeth County Underground Water
3 Conservation District No. 1 shall amend to bring into compliance
4 with Sections 36.002 and 36.101(a), Water Code, as amended by this
5 Act, any rule enacted before the effective date of this Act that is
6 void under Section 36.101(a), Water Code, as amended by this Act.

7 SECTION 6. (a) Except as provided by Section 5 and
8 Subsection (b) of this section, the changes in law made by this Act
9 apply only to a rule adopted by a groundwater conservation district
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11 an application filed pursuant to a rule adopted on or after the
12 effective date of this Act.

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14 (1) an application filed with the Hudspeth County
15 Underground Water Conservation District No. 1 that is pending on
16 the effective date of this Act; or

17 (2) a permit decision by the Hudspeth County
18 Underground Water Conservation District No. 1 that is not final on
19 the effective date of this Act.

20 SECTION 7. This Act takes effect September 1, 2005.

F

HOUSE ENGROSSMENT

By: Puente

H.B. No. 2423

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AN ACT

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2 date of this Act, the Hudspeth County Underground Water
3 Conservation District No. 1 shall amend to bring into compliance
4 with Sections 36.002 and 36.101(a), Water Code, as amended by this
5 Act, any rule enacted before the effective date of this Act that is
6 void under Section 36.101(a), Water Code, as amended by this Act.

7 SECTION 6. (a) Except as provided by Section 5 and
8 Subsection (b) of this section, the changes in law made by this Act
9 apply only to a rule adopted by a groundwater conservation district
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11 an application filed pursuant to a rule adopted on or after the
12 effective date of this Act.

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15 Underground Water Conservation District No. 1 that is pending on
16 the effective date of this Act; or

17 (2) a permit decision by the Hudspeth County
18 Underground Water Conservation District No. 1 that is not final on
19 the effective date of this Act.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 12, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.),
Committee Report 1st House, As Amended

No fiscal implication to the State is anticipated.

Local Government Impact

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Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

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Source Agencies:

LBB Staff: JOB, WK, DLBa

By: Puente (Senate Sponsor - Armbrister) H.B. No. 2423
(In the Senate - Received from the House April 27, 2005;
April 29, 2005, read first time and referred to Committee on
Natural Resources; May 20, 2005, reported adversely, with
favorable Committee Substitute by the following vote: Yeas 6,
Nays 0; May 20, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 2423 By: Armbrister

A BILL TO BE ENTITLED
AN ACT

relating to the consideration of historic or existing use in the
regulation of pumping and discrimination by a groundwater
conservation district against landowners whose land is enrolled or
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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(4-a) "Federal conservation program" means the
Conservation Reserve Program of the United States Department of
Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as
follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and
rights of the owners of the land and their lessees and assigns in
groundwater are hereby recognized, and nothing in this code shall
be construed as depriving or divesting the owners or their lessees
and assigns of the ownership or rights, except as those rights may
be limited or altered by rules promulgated by a district. A rule
promulgated by a district may not discriminate between owners of
land that is irrigated for production and owners of land or their
lessees and assigns whose land that was irrigated for production is
enrolled or participating in a federal conservation program.

SECTION 3. Section 36.113, Water Code, is amended by
amending Subsections (a), (c), (e), and (f) and adding Subsections
(h) through (l) to read as follows:

(a) A district shall require permits for ~~[the]~~ drilling,
equipping, ~~[or]~~ completing, or operating ~~[of]~~ wells or for
substantially altering the size of wells or well pumps.

(c) A district may require that the following be included in
the permit application:

(1) the name and mailing address of the applicant and
the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the
property, documentation establishing the applicable authority to
construct and operate a well for the proposed purpose of use;

(3) a statement of the nature and purpose of the
proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that
the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at
which water will be withdrawn;

(6) a water well closure plan or a declaration that the
applicant will comply with well plugging guidelines and report
closure to the commission; and

(7) a drought contingency plan.

(e) The district may impose more restrictive permit
conditions on new permit applications and increased use by historic
or existing users if the limitations:

(1) apply to all subsequent new permit applications
and increased use by historic or existing users, regardless of type
or location of use;

(2) bear a reasonable relationship to the existing
district management plan; and

(3) are reasonably necessary to protect existing use.

(f) Permits may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, operating, or alteration of wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(h) A district shall provide that a change in the purpose and place of use under a permit that was granted for historic or existing use may not be made without a permit amendment. The district shall grant a permit amendment changing the purpose and place of use on application of the holder of a permit that was granted for historic or existing use, and the rules that apply to the operation of a well under any other permit issued by the district not based on historic or existing use apply to the operation of the well under the amended permit.

(i) A district that authorizes a permit for historic or existing use shall issue that type of permit based on evidence of the maximum amount of water beneficially used without waste during any one year before the district was created, or before the rules of the district were adopted or notice of such proposed rules was published and only for the purpose and amount beneficially used without waste in that year.

(j) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(k) A permitting decision by a district is void if:
 (1) the district makes its decision in violation of Subsection (j); and

(2) the district would have reached a different decision if the district had treated land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program the same as land irrigated for production.

(l) On the application of an affected owner of land or the owner's lessee or assigns, the district shall reconsider a decision that is void under Subsection (k) and base its decision on the equal treatment of land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program and land that is irrigated for production. Not later than the 90th day after the date the district receives an application under this subsection, the district shall render its decision and notify the applicant of its decision.

SECTION 4. Subsection (b), Section 36.116, Water Code, is amended to read as follows:

(b) In promulgating any rules limiting groundwater production, the district may preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071 and as provided by Section 36.113.

SECTION 5. (a) Except in any district located in a single county whose boundaries were expanded, but are not coextensive with the county in which the district is located, by an Act of the Texas Legislature in a regular session on or after 2003, the changes in law made under this legislation do not apply to:

(1) an application or permit issued on the basis of an application filed before March 1, 2005;

(2) a renewal or amendment of a permit issued on the basis of an application filed before March 1, 2005;

(3) a permit issued under rules in effect as of March 1, 2005;

(4) a renewal or amendment to a permit issued under rules in effect as of March 1, 2005; or

(5) rules of groundwater conservation districts that were adopted prior to March 1, 2005.

(b) Subsection (a) of this section does not limit the ability of a groundwater conservation district to adopt procedural

3-1 rules governing notice, hearing, rulemaking, or permit processing
3-2 in accordance with any law finally passed by the 79th Legislature,
3-3 Regular Session, 2005, that governs notice, hearing, rulemaking, or
3-4 permit processing procedures of groundwater conservation
3-5 districts, if the procedural rules adopted do not conflict with a
3-6 substantive district rule that existed on March 1, 2005.

3-7 SECTION 6. This Act takes effect September 1, 2005.

3-8 * * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 2423
By Puente / Armbrister
(Author/Senate Sponsor)
5/20/05
(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,
have on 5/17/05, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☐ the caption remained the same as original measure
☒ the caption changed with adoption of the substitute
☐ do pass as substituted, and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no
A revised fiscal note was requested. ☒ yes ☐ no
An actuarial analysis was requested. ☐ yes ☒ no
Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	X			
Senator Jackson, Vice-Chair			X	
Senator Barrientos	X			
Senator Duncan	X			
Senator Estes	X			
Senator Fraser			X	
Senator Hinojosa			X	
Senator Lindsay	X			
Senator Madla			X	
Senator Seliger			X	
Senator Staples	X			
TOTAL VOTES	6	0	5	0

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

Holly C. Helms
COMMITTEE CLERK

Ken Armbrister
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

BILL ANALYSIS

Senate Research Center

H.B. 2423
By: Puente (Armbrister)
Natural Resources
5/14/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Most states treat farms participating in federal conservation programs as "active" for purposes of farm program benefits. In Texas, however, some groundwater districts treat farms participating in federal conservation programs as inactive for the purpose of issuing permits based on historic use.

H.B. 2423 prohibits a groundwater conservation district from discriminating against a farm participating in a federal conservation program, such as the U.S. Department of Agriculture's Conservation Reserve Program.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a groundwater conservation district is modified in SECTION 2 (Section 36.002, Water Code) and SECTION 3 (Section 36.101, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001, Water Code, by adding Subdivision (4-a), to define "federal conservation program."

SECTION 2. Amends Section 36.002, Water Code, to prohibit a rule promulgated by a groundwater conservation district (district) from discriminating between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land is enrolled or participating in a federal conservation program.

SECTION 3. Amends Section 36.101(a), Water Code, as follows:

(a) Requires the board of directors of a district (board) to consider all groundwater uses and needs and to develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land enrolled or participating in a federal conservation program during the rulemaking process. Provides that any rule of a district that discriminates between land that is irrigated for production and land enrolled or participating in a federal conservation program is void.

SECTION 4. Amends Section 36.113, Water Code, by adding Subsections (h) and (i), as follows:

(h) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(i) Sets forth situations in which a permitting decision by a district is void.

SECTION 5. Requires the Hudspeth County Underground Water Conservation District No. 1, no later than the 90th day after the effective date of this Act, to amend to bring into compliance with Sections 36.002 and 36.101(a), Water Code, as amended by this Act, any rule enacted before the effective date of this Act that is void under Section 36.101(a), Water Code, as amended by this Act.

SECTION 6. (a) Provides that except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) Sets forth the applications and permits for which the changes in law made by this Act apply.

SECTION 7. Effective date: September 1, 2005.

BILL ANALYSIS

Senate Research Center
79R18024 E

C.S.H.B. 2423
By: Puente (Armbrister)
Natural Resources
5/19/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Most states treat farms participating in federal conservation programs as "active" for purposes of farm program benefits. In Texas, however, some groundwater districts treat farms participating in federal conservation programs as inactive for the purpose of issuing permits based on historic use.

C.S.H.B. 2423 prohibits a groundwater conservation district from discriminating against a farm participating in a federal conservation program, such as the U.S. Department of Agriculture's Conservation Reserve Program

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a groundwater conservation district is modified in SECTION 2 (Section 36.002, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36.001, Water Code, by adding Subdivision (4-a), to define "federal conservation program."

SECTION 2. Amends Section 36.002, Water Code, to prohibit a rule promulgated by a groundwater conservation district (district) from discriminating between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

SECTION 3. Amends Section 36.113, Water Code, by amending Subsections (a), (c), (e), and (f), and adding Subsections (h) and (i), as follows:

(a) Requires the district to require permits for drilling, equipping, completing, or operating wells or for substantially altering the size of wells or well pumps.

(c) Authorizes a district to require that specific information be included if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed purpose of use in the permit application.

(e) Authorizes the district to impose more restrictive permit conditions on new permit applications and increased use by historic or existing users based on the conditions of certain limitations. Makes a conforming change.

(f) Makes a conforming change.

(h) Requires a district to provide that a change in the purpose and place of use under a permit that was granted for historic or existing use may not be made without a permit amendment. Requires the district to grant a permit amendment changing the purpose and place of use on application of the holder of a permit that was granted for historic or existing use, and the rules that apply to the operation of a well under any other permit issued by the district not based on historic or existing use apply to the operation of the well under the amended permit.

(i) Requires a district that authorizes a permit for historic or existing use to issue that type of permit based on evidence of the maximum amount of water beneficially used without waste during any one year before the district was created, or before the rules of the district were adopted or notice of such proposed rules was published and only for the purpose and amount beneficially used without waste in that year.

(j) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(k) Sets forth situations in which a permitting decision by a district is void.

(l) Requires the district, on the application of an affected owner of land or the owner's lessee or assigns, to reconsider a decision that is void under Subsection (k) and base its decision on the equal treatment of land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program and land that is irrigated for production. Requires the district to render its decision and notify the applicant of its decision, not later than the 90th day after the date the district receives an application under this subsection.

SECTION 4. Amends Section 36.116(b), Water Code, to authorize the district, in promulgating any rules limiting groundwater production, to preserve historic or existing use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071 and as provided by Section 36.113.

SECTION 5. (a) Provides that the changes in law made under this legislation do not apply to certain permit issues, except in any district located in a single county whose boundaries were expanded, but are not coextensive with the county in which the district is located, by an Act of the Texas Legislature in a regular session on or after 2003.

(b) Provides that Subsection (a) of this section does not limit the ability of a district to adopt procedural rules governing notice, hearing, rulemaking, or permit processing in accordance with any law finally passed by the 79th Legislature, Regular Session, 2005, that governs notice, hearing, rulemaking, or permit processing procedures of districts, if the procedural rules adopted do not conflict with a substantive district rule that existed on March 1, 2005.

SECTION 6. Effective date: September 1, 2005.

WITNESS LIST

HB 2423

SENATE COMMITTEE REPORT

Natural Resources

May 16, 2005 - 1:00PM

AGAINST: Jones, Kathy (Lone Star Groundwater Conservation District), Conroe, TX

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 18, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to the consideration of historic or existing use in the regulation of pumping and discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would prohibit a groundwater conservation district from promulgating rules that would discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land was irrigated for production is enrolled or participating in a federal conservation program. A district would be prohibited from discriminating when issuing a permit, as well.

The bill would add the operation of wells to those activities for which a district shall require a permit and would add to the information that must be included in a permit application. A permit amendment would be required if there is a change in the purpose and place of use under a permit that was granted for historic or existing use.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 12, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would prohibit a groundwater conservation district from promulgating rules that would discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land is enrolled or participating in a federal conservation program. A district would be prohibited from discriminating when issuing a permit, as well.

Not later than the 90th day after the effective date of the bill, the Hudspeth County Underground Water Conservation District No. 1 would be required to take actions to come into compliance with the provisions under Sections 36.002 and 36.101(a) Water Code established by the bill. Otherwise, the changes in law would apply only to a rule adopted by a district on or after the effective date of the bill.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 12, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.),
Committee Report 1st House, As Amended

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 24, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), **As Introduced**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

ADOPTED
31-0
MAY 23 2005
ag amended
Latoy
Secretary of the Senate

By: _____

H.B. No. 2423

Substitute the following for ____B. No. ____:

By: 

C.S. ____B. No. ____

A BILL TO BE ENTITLED

AN ACT

relating to the consideration of historic or existing use in the regulation of pumping and discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.113, Water Code, is amended by

1 amending Subsections (a), (c), (e), and (f) and adding Subsections
2 (h) through (l) to read as follows:

3 (a) A district shall require permits for [~~the~~] drilling,
4 equipping, [~~or~~] completing, or operating [~~of~~] wells or for
5 substantially altering the size of wells or well pumps.

6 (c) A district may require that the following be included in
7 the permit application:

8 (1) the name and mailing address of the applicant and
9 the owner of the land on which the well will be located;

10 (2) if the applicant is other than the owner of the
11 property, documentation establishing the applicable authority to
12 construct and operate a well for the proposed purpose of use;

13 (3) a statement of the nature and purpose of the
14 proposed use and the amount of water to be used for each purpose;

15 (4) a water conservation plan or a declaration that
16 the applicant will comply with the district's management plan;

17 (5) the location of each well and the estimated rate at
18 which water will be withdrawn;

19 (6) a water well closure plan or a declaration that the
20 applicant will comply with well plugging guidelines and report
21 closure to the commission; and

22 (7) a drought contingency plan.

23 (e) The district may impose more restrictive permit
24 conditions on new permit applications and increased use by historic
25 or existing users if the limitations:

26 (1) apply to all subsequent new permit applications
27 and increased use by historic or existing users, regardless of type

1 or location of use;

2 (2) bear a reasonable relationship to the existing
3 district management plan; and

4 (3) are reasonably necessary to protect existing use.

5 (f) Permits may be issued subject to the rules promulgated
6 by the district and subject to terms and provisions with reference
7 to the drilling, equipping, completion, operating, or alteration of
8 wells or pumps that may be necessary to prevent waste and achieve
9 water conservation, minimize as far as practicable the drawdown of
10 the water table or the reduction of artesian pressure, lessen
11 interference between wells, or control and prevent subsidence.

12 (h) A district shall provide that a change in the purpose
13 and place of use under a permit that was granted for historic or
14 existing use may not be made without a permit amendment. The
15 district shall grant a permit amendment changing the purpose and
16 place of use on application of the holder of a permit that was
17 granted for historic or existing use, and the rules that apply to
18 the operation of a well under any other permit issued by the
19 district not based on historic or existing use apply to the
20 operation of the well under the amended permit.

21 (i) A district that authorizes a permit for historic or
22 existing use shall issue that type of permit based on evidence of
23 the maximum amount of water beneficially used without waste during
24 any one year before the district was created, or before the rules of
25 the district were adopted or notice of such proposed rules was
26 published and only for the purpose and amount beneficially used
27 without waste in that year.

1 (j) In issuing a permit for an existing or historic use, a
2 district may not discriminate between land that is irrigated for
3 production and land or wells on land that was irrigated for
4 production and enrolled or participating in a federal conservation
5 program.

6 (k) A permitting decision by a district is void if:

7 (1) the district makes its decision in violation of
8 Subsection (j); and

9 (2) the district would have reached a different
10 decision if the district had treated land or wells on land that was
11 irrigated for production and enrolled or participating in a federal
12 conservation program the same as land irrigated for production.

13 (l) On the application of an affected owner of land or the
14 owner's lessee or assigns, the district shall reconsider a decision
15 that is void under Subsection (k) and base its decision on the equal
16 treatment of land or wells on land that was irrigated for production
17 and enrolled or participating in a federal conservation program and
18 land that is irrigated for production. Not later than the 90th day
19 after the date the district receives an application under this
20 subsection, the district shall render its decision and notify the
21 applicant of its decision.

22 SECTION 4. Subsection (b), Section 36.116, Water Code, is
23 amended to read as follows:

24 (b) In promulgating any rules limiting groundwater
25 production, the district may preserve historic or existing use
26 before the effective date of the rules to the maximum extent
27 practicable consistent with the district's comprehensive

1 management plan under Section 36.1071 and as provided by Section
2 36.113.

3 SECTION 5. (a) Except in any district located in a single
4 county whose boundaries were expanded, but are not coextensive with
5 the county in which the district is located, by an Act of the Texas
6 Legislature in a regular session on or after 2003, the changes in
7 law made under this legislation do not apply to:

8 (1) an application or permit issued on the basis of an
9 application filed before March 1, 2005;

10 (2) a renewal or amendment of a permit issued on the
11 basis of an application filed before March 1, 2005;

12 (3) a permit issued under rules in effect as of March
13 1, 2005;

14 (4) a renewal or amendment to a permit issued under
15 rules in effect as of March 1, 2005; or

16 (5) rules of groundwater conservation districts that
17 were adopted prior to March 1, 2005.

18 (b) Subsection (a) of this section does not limit the
19 ability of a groundwater conservation district to adopt procedural
20 rules governing notice, hearing, rulemaking, or permit processing
21 in accordance with any law finally passed by the 79th Legislature,
22 Regular Session, 2005, that governs notice, hearing, rulemaking, or
23 permit processing procedures of groundwater conservation
24 districts, if the procedural rules adopted do not conflict with a
25 substantive district rule that existed on March 1, 2005.

26 SECTION 6. This Act takes effect September 1, 2005.

ADOPTED

MAY 23 2005

Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

Amend C.S.H.B. 2423 (Senate Committee Printing) as follows:

(1) In the recital to SECTION 3 of the bill (page 1, line 34), strike "(h) through (l)" and substitute "(h)-(m)".

(2) In SECTION 3 of the bill, immediately following added Section 36.113(1), Water Code (page 2, between lines 44 and 45), insert the following:

(m) A district that requires an applicant to pay, at the time a historic or existing use permit application is filed, a fee based on the amount of groundwater requested in the application shall refund to the applicant, if the district grants a permit for an amount of groundwater less than the amount requested, the difference between the fee paid for the requested amount of groundwater and the fee required for the amount of groundwater authorized for use by the permit granted by the district.

(3) Between SECTIONS 3 and 4 of the bill (page 2, between lines 44 and 45), insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. Amend Subchapter D, Chapter 36, Water Code, by adding Section 36.1135 to read as follows:

Sec. 36.1135. CERTAIN HISTORIC AND EXISTING USE PERMITS. (a) A district shall grant an application for a historic or existing use permit filed not later than January 1, 2004, in accordance with rules enacted not later than December 1, 2003, that authorize the issuance of a permit for an existing or historic use, and for which a hearing report was prepared by the presiding officer of the district and considered in a public hearing not later than June 1,

1 2005.

2 (b) The district shall issue a permit for an application
3 granted under Subsection (a) authorizing the production of
4 groundwater for the amount and on the terms recommended by the
5 hearing report, as amended on the record during the public hearing
6 on the application.

7 (c) A district may not reduce the amount of water authorized
8 for use by a permit issued in accordance with this section unless
9 the total amount of groundwater authorized for use by historic and
10 existing use permits exceeds the total calculated volume of
11 groundwater that the relevant aquifer or groundwater management
12 zone is capable of producing based on the best available scientific
13 data.

14 (d) If the conditions of Subsection (c) are satisfied, the
15 district may implement a pro rata reduction of the amount of
16 groundwater production authorized by each historic and existing use
17 permit so that the total groundwater production authorized by all
18 of the historic and existing use permits does not exceed the total
19 calculated volume of groundwater that the aquifer or groundwater
20 management zone is capable of producing if the pro rata reduction
21 is:

- 22 (1) approved by the Texas Water Development Board; and
23 (2) based on the best available scientific data.

24 (e) An amendment to a permit issued in accordance with this
25 section is not subject to well spacing requirements, production
26 limits, or other applicable requirements unless the amendment
27 increases the volume of groundwater authorized for use by the
28 permit, in which case the requirement or limit applies only to the
29 increased amount of groundwater authorized for use by the permit

1 amendment.

2 (f) This section does not apply to a district located in a
3 single county whose boundaries were expanded by the legislature on
4 or after January 1, 2003, and whose boundaries are not coextensive
5 with the county in which the district is located.


1 FLOOR AMENDMENT NO. 2

By: 

- 2 Amend HB 2423 (committee report) on Page 2, lines ~~65 through 67~~, by striking
- 3 ~~Subsection (5)~~, beginning with ";" and replacing it with ".", and by striking lines 66 and
- 4 67 in their entirety.

ADOPTED

MAY 23 2005


Secretary of the Senate

SENATE AMENDMENTS

05 MAY 24 AM 2: 20

2nd Printing

HOUSE OF REPRESENTATIVES

By: Puente

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land enrolled or participating in a federal conservation program. Any rule of a district that discriminates between land that is irrigated for production and land enrolled or participating in a federal conservation program is void.

SECTION 4. Section 36.113, Water Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

(1) the district makes its decision in violation of Subsection (h); and

(2) the district would have reached a different decision if the district had treated land or wells on land enrolled or participating in a federal conservation program the same as land irrigated for production.

1 SECTION 5. Not later than the 90th day after the effective
2 date of this Act, the Hudspeth County Underground Water
3 Conservation District No. 1 shall amend to bring into compliance
4 with Sections 36.002 and 36.101(a), Water Code, as amended by this
5 Act, any rule enacted before the effective date of this Act that is
6 void under Section 36.101(a), Water Code, as amended by this Act.

7 SECTION 6. (a) Except as provided by Section 5 and
8 Subsection (b) of this section, the changes in law made by this Act
9 apply only to a rule adopted by a groundwater conservation district
10 on or after the effective date of this Act or to a permit issued or
11 an application filed pursuant to a rule adopted on or after the
12 effective date of this Act.

13 (b) The changes in law made by this Act apply to:

14 (1) an application filed with the Hudspeth County
15 Underground Water Conservation District No. 1 that is pending on
16 the effective date of this Act; or

17 (2) a permit decision by the Hudspeth County
18 Underground Water Conservation District No. 1 that is not final on
19 the effective date of this Act.

20 SECTION 7. This Act takes effect September 1, 2005.

ADOPTED

31-0

MAY 23 2005

ag amended

Secretary of the Senate

By: _____

H.B. No. 2423

Substitute the following for ____B. No. ____:

By: _____

C.S. ____B. No. ____

A BILL TO BE ENTITLED

1

AN ACT

2

relating to the consideration of historic or existing use in the
3 regulation of pumping and discrimination by a groundwater
4 conservation district against landowners whose land is enrolled or
5 participating in a federal conservation program.

6

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7

SECTION 1. Section 36.001, Water Code, is amended by adding
8 Subdivision (4-a) to read as follows:

9

(4-a) "Federal conservation program" means the
10 Conservation Reserve Program of the United States Department of
11 Agriculture, or any successor program.

12

SECTION 2. Section 36.002, Water Code, is amended to read as
13 follows:

14

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and
15 rights of the owners of the land and their lessees and assigns in
16 groundwater are hereby recognized, and nothing in this code shall
17 be construed as depriving or divesting the owners or their lessees
18 and assigns of the ownership or rights, except as those rights may
19 be limited or altered by rules promulgated by a district. A rule
20 promulgated by a district may not discriminate between owners of
21 land that is irrigated for production and owners of land or their
22 lessees and assigns whose land that was irrigated for production is
23 enrolled or participating in a federal conservation program.

24

SECTION 3. Section 36.113, Water Code, is amended by

1 amending Subsections (a), (c), (e), and (f) and adding Subsections
2 (h) through (l) to read as follows:

3 (a) A district shall require permits for ~~[the]~~ drilling,
4 equipping, ~~[or]~~ completing, or operating ~~[of]~~ wells or for
5 substantially altering the size of wells or well pumps.

6 (c) A district may require that the following be included in
7 the permit application:

8 (1) the name and mailing address of the applicant and
9 the owner of the land on which the well will be located;

10 (2) if the applicant is other than the owner of the
11 property, documentation establishing the applicable authority to
12 construct and operate a well for the proposed purpose of use;

13 (3) a statement of the nature and purpose of the
14 proposed use and the amount of water to be used for each purpose;

15 (4) a water conservation plan or a declaration that
16 the applicant will comply with the district's management plan;

17 (5) the location of each well and the estimated rate at
18 which water will be withdrawn;

19 (6) a water well closure plan or a declaration that the
20 applicant will comply with well plugging guidelines and report
21 closure to the commission; and

22 (7) a drought contingency plan.

23 (e) The district may impose more restrictive permit
24 conditions on new permit applications and increased use by historic
25 or existing users if the limitations:

26 (1) apply to all subsequent new permit applications
27 and increased use by historic or existing users, regardless of type

1 or location of use;

2 (2) bear a reasonable relationship to the existing
3 district management plan; and

4 (3) are reasonably necessary to protect existing use.

5 (f) Permits may be issued subject to the rules promulgated
6 by the district and subject to terms and provisions with reference
7 to the drilling, equipping, completion, operating, or alteration of
8 wells or pumps that may be necessary to prevent waste and achieve
9 water conservation, minimize as far as practicable the drawdown of
10 the water table or the reduction of artesian pressure, lessen
11 interference between wells, or control and prevent subsidence.

12 (h) A district shall provide that a change in the purpose
13 and place of use under a permit that was granted for historic or
14 existing use may not be made without a permit amendment. The
15 district shall grant a permit amendment changing the purpose and
16 place of use on application of the holder of a permit that was
17 granted for historic or existing use, and the rules that apply to
18 the operation of a well under any other permit issued by the
19 district not based on historic or existing use apply to the
20 operation of the well under the amended permit.

21 (i) A district that authorizes a permit for historic or
22 existing use shall issue that type of permit based on evidence of
23 the maximum amount of water beneficially used without waste during
24 any one year before the district was created, or before the rules of
25 the district were adopted or notice of such proposed rules was
26 published and only for the purpose and amount beneficially used
27 without waste in that year.

1 (j) In issuing a permit for an existing or historic use, a
2 district may not discriminate between land that is irrigated for
3 production and land or wells on land that was irrigated for
4 production and enrolled or participating in a federal conservation
5 program.

6 (k) A permitting decision by a district is void if:

7 (1) the district makes its decision in violation of
8 Subsection (j); and

9 (2) the district would have reached a different
10 decision if the district had treated land or wells on land that was
11 irrigated for production and enrolled or participating in a federal
12 conservation program the same as land irrigated for production.

13 (l) On the application of an affected owner of land or the
14 owner's lessee or assigns, the district shall reconsider a decision
15 that is void under Subsection (k) and base its decision on the equal
16 treatment of land or wells on land that was irrigated for production
17 and enrolled or participating in a federal conservation program and
18 land that is irrigated for production. Not later than the 90th day
19 after the date the district receives an application under this
20 subsection, the district shall render its decision and notify the
21 applicant of its decision.

22 SECTION 4. Subsection (b), Section 36.116, Water Code, is
23 amended to read as follows:

24 (b) In promulgating any rules limiting groundwater
25 production, the district may preserve historic or existing use
26 before the effective date of the rules to the maximum extent
27 practicable consistent with the district's comprehensive

1 management plan under Section 36.1071 and as provided by Section
2 36.113.

3 SECTION 5. (a) Except in any district located in a single
4 county whose boundaries were expanded, but are not coextensive with
5 the county in which the district is located, by an Act of the Texas
6 Legislature in a regular session on or after 2003, the changes in
7 law made under this legislation do not apply to:

8 (1) an application or permit issued on the basis of an
9 application filed before March 1, 2005;

10 (2) a renewal or amendment of a permit issued on the
11 basis of an application filed before March 1, 2005;

12 (3) a permit issued under rules in effect as of March
13 1, 2005;

14 (4) a renewal or amendment to a permit issued under
15 rules in effect as of March 1, 2005; or

16 (5) rules of groundwater conservation districts that
17 were adopted prior to March 1, 2005.

18 (b) Subsection (a) of this section does not limit the
19 ability of a groundwater conservation district to adopt procedural
20 rules governing notice, hearing, rulemaking, or permit processing
21 in accordance with any law finally passed by the 79th Legislature,
22 Regular Session, 2005, that governs notice, hearing, rulemaking, or
23 permit processing procedures of groundwater conservation
24 districts, if the procedural rules adopted do not conflict with a
25 substantive district rule that existed on March 1, 2005.

26 SECTION 6. This Act takes effect September 1, 2005.

ADOPTED

MAY 23 2005

Leroy Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *[Signature]*

Amend C.S.H.B. 2423 (Senate Committee Printing) as follows:

(1) In the recital to SECTION 3 of the bill (page 1, line 34), strike "(h) through (l)" and substitute "(h)-(m)".

(2) In SECTION 3 of the bill, immediately following added Section 36.113(1), Water Code (page 2, between lines 44 and 45), insert the following:

(m) A district that requires an applicant to pay, at the time a historic or existing use permit application is filed, a fee based on the amount of groundwater requested in the application shall refund to the applicant, if the district grants a permit for an amount of groundwater less than the amount requested, the difference between the fee paid for the requested amount of groundwater and the fee required for the amount of groundwater authorized for use by the permit granted by the district.

(3) Between SECTIONS 3 and 4 of the bill (page 2, between lines 44 and 45), insert the following appropriately numbered SECTION and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. Amend Subchapter D, Chapter 36, Water Code, by adding Section 36.1135 to read as follows:

Sec. 36.1135. CERTAIN HISTORIC AND EXISTING USE PERMITS. (a)

A district shall grant an application for a historic or existing use permit filed not later than January 1, 2004, in accordance with rules enacted not later than December 1, 2003, that authorize the issuance of a permit for an existing or historic use, and for which a hearing report was prepared by the presiding officer of the district and considered in a public hearing not later than June 1,

1 2005.

2 (b) The district shall issue a permit for an application
3 granted under Subsection (a) authorizing the production of
4 groundwater for the amount and on the terms recommended by the
5 hearing report, as amended on the record during the public hearing
6 on the application.

7 (c) A district may not reduce the amount of water authorized
8 for use by a permit issued in accordance with this section unless
9 the total amount of groundwater authorized for use by historic and
10 existing use permits exceeds the total calculated volume of
11 groundwater that the relevant aquifer or groundwater management
12 zone is capable of producing based on the best available scientific
13 data.

14 (d) If the conditions of Subsection (c) are satisfied, the
15 district may implement a pro rata reduction of the amount of
16 groundwater production authorized by each historic and existing use
17 permit so that the total groundwater production authorized by all
18 of the historic and existing use permits does not exceed the total
19 calculated volume of groundwater that the aquifer or groundwater
20 management zone is capable of producing if the pro rata reduction
21 is:

22 (1) approved by the Texas Water Development Board; and

23 (2) based on the best available scientific data.

24 (e) An amendment to a permit issued in accordance with this
25 section is not subject to well spacing requirements, production
26 limits, or other applicable requirements unless the amendment
27 increases the volume of groundwater authorized for use by the
28 permit, in which case the requirement or limit applies only to the
29 increased amount of groundwater authorized for use by the permit

1 amendment.

2 (f) This section does not apply to a district located in a
3 single county whose boundaries were expanded by the legislature on
4 or after January 1, 2003, and whose boundaries are not coextensive
5 with the county in which the district is located.


1 FLOOR AMENDMENT NO. 2

By: 

- 2 Amend HB 2423 (committee report) on Page 2, line 65 ~~through 67~~, by striking
- 3 ~~Subsection (5)~~, beginning with ";" and replacing it with ".", and by striking lines 66 and
- 4 67 in their entirety.

ADOPTED

MAY 23 2005


Secretary of the Senate

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 18, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to the consideration of historic or existing use in the regulation of pumping and discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), Committee Report 2nd House, Substituted

No fiscal implication to the State is anticipated.

The bill would prohibit a groundwater conservation district from promulgating rules that would discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land was irrigated for production is enrolled or participating in a federal conservation program. A district would be prohibited from discriminating when issuing a permit, as well.

The bill would add the operation of wells to those activities for which a district shall require a permit and would add to the information that must be included in a permit application. A permit amendment would be required if there is a change in the purpose and place of use under a permit that was granted for historic or existing use.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 12, 2005

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), As Engrossed

No fiscal implication to the State is anticipated.

The bill would prohibit a groundwater conservation district from promulgating rules that would discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land is enrolled or participating in a federal conservation program. A district would be prohibited from discriminating when issuing a permit, as well.

Not later than the 90th day after the effective date of the bill, the Hudspeth County Underground Water Conservation District No. 1 would be required to take actions to come into compliance with the provisions under Sections 36.002 and 36.101(a) Water Code established by the bill. Otherwise, the changes in law would apply only to a rule adopted by a district on or after the effective date of the bill.

The bill would take effect September 1, 2005.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 12, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.),
Committee Report 1st House, As Amended**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 24, 2005

TO: Honorable Robert Puente, Chair, House Committee on Natural Resources

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB2423 by Puente (Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.), As
Introduced

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, WK, DLBa

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 29, 2005

Date

05 MAY 29 PM 4:22

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

ADOPTED

by NRJ

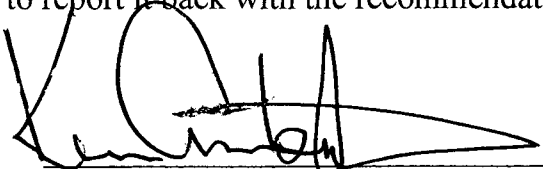
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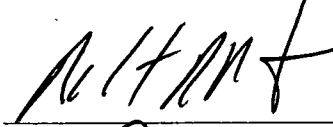
CFT

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB2423 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Senator Armbrister, Chair



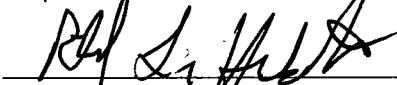
Representative Puente, Chair

Senator Harris

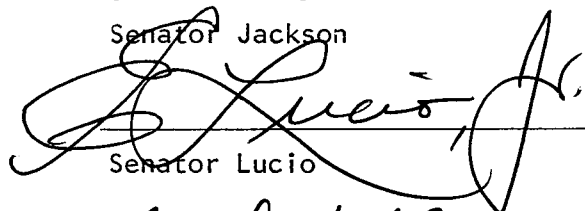


Senator Jackson

Representative Geren



Representative Hardcastle



Senator Lucio

Representative Hope



On the part of the Senate

Senator Madla

On the part of the House

Representative Tracy King

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

Revised

CONFERENCE COMMITTEE REPORT

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

1 SECTION 3. Section 36.101(a), Water Code, is amended to
2 read as follows:

3 (a) A district may make and enforce rules, including rules
4 limiting groundwater production based on tract size or the
5 spacing of wells, to provide for conserving, preserving,
6 protecting, and recharging of the groundwater or of a
7 groundwater reservoir or its subdivisions in order to control
8 subsidence, prevent degradation of water quality, or prevent
9 waste of groundwater and to carry out the powers and duties
10 provided by this chapter. During the rulemaking process the
11 board shall consider all groundwater uses and needs and shall
12 develop rules which are fair and impartial and that do not
13 discriminate between land that is irrigated for production and
14 land that was irrigated for production and enrolled or
15 participating in a federal conservation program. Any rule of a
16 district that discriminates between land that is irrigated for
17 production and land that was irrigated for production and
18 enrolled or participating in a federal conservation program is
19 void.

20 SECTION 4. Section 36.113[✓], Water Code[✓], is amended by
21 adding Subsections (h) and (i) to read as follows:

22 (h) In issuing a permit for an existing or historic use, a
23 district may not discriminate between land that is irrigated for
24 production and land or wells on land that was irrigated for
25 production and enrolled or participating in a federal
26 conservation program.

27 (i) A permitting decision by a district is void if:

1 (1) the district makes its decision in violation of
2 Subsection (h); and

3 (2) the district would have reached a different
4 decision if the district had treated land or wells on land that
5 was irrigated for production and enrolled or participating in a
6 federal conservation program the same as land irrigated for
7 production.

8 SECTION 5. Not later than the 90th day after the effective
9 date of this Act, the Hudspeth County Underground Water
10 Conservation District No. 1 shall amend to bring into compliance
11 with Sections 36.002 and 36.101(a), Water Code, as amended by
12 this Act, any rule enacted before the effective date of this Act
13 that is void under Section 36.101(a), Water Code, as amended by
14 this Act.

15 SECTION 6. (a) Except as provided by Section 5 and
16 Subsection (b) of this section, the changes in law made by this
17 Act apply only to a rule adopted by a groundwater conservation
18 district on or after the effective date of this Act or to a
19 permit issued or an application filed pursuant to a rule adopted
20 on or after the effective date of this Act.

21 (b) The changes in law made by this Act apply to:

22 (1) an application filed with the Hudspeth County
23 Underground Water Conservation District No. 1 that is pending on
24 the effective date of this Act; or

25 (2) a permit decision by the Hudspeth County
26 Underground Water Conservation District No. 1 that is not final
27 on the effective date of this Act.

1 (1) SECTION 7. This Act takes effect September 1, 2005.

2

3

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 1. Adds Section 36.001(4-a), Water Code, relating to definitions.

SECTION 2. Amends Section 36.002, Water Code, Ownership of Groundwater, to prohibit a rule promulgated by a district from discriminating between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land is enrolled or participating in a federal conservation program.

SECTION 3. Amends Section 36.101(a), Water Code, relating to district rulemaking power, to require that the rules developed by a district's board of directors not discriminate between land that is irrigated for production and land enrolled or participating in a federal conservation program. Provides that any rule that discriminates in such fashion is void.

SECTION 4. Adds Sections 36.113(h) and (i), Water Code, relating to permits for wells, as follows:

No equivalent provision.

No equivalent provision.

SECTION 1. Same as House version.

SECTION 2. Same as House version, except prohibits discrimination between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land *that was irrigated for production* is enrolled or participating in a federal conservation program.

No equivalent provision.

SECTION 3. Amends Sections 36.113(a), (c), (e), and (f), and adds (h) through (m), Water Code, as follows: (FA1)

(a) Adds a requirement for permits for operating wells as well as for permits for drilling, equipping, and completion of wells and other related activity.

(c) Allows a district to require that the permit application include documentation establishing the applicable authority to construct and operate a well for the proposed purpose of use, if the applicant is other than the owner of the property.

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

SECTION 3. Same as House version, except it requires rules developed by a district's board of directors not discriminate between land that is irrigated for production and land *that was irrigated for production and* enrolled or participating in a federal conservation program.

SECTION 4. Same as House version.

Same as House version

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	(e) Allows a district to impose more restrictive permit conditions on new permit applications and increased use by existing users, as well as by historic users, under certain conditions.	Same as House version.
No equivalent provision.	(f) Makes a conforming change relating to the issuance of permits for operating wells.	Same as House version.
See (h) below.	(h) Requires a district to prohibit a change in the purpose and place of use under a permit that was granted for historic or existing use without a permit amendment. Requires the district to grant such permit amendment on application of the holder of a permit that was granted for historic or existing use, and makes the rules that apply to well operations under any other permit issued by the district not based on historic or existing use applicable also to operation of a well under the amended permit.	Same as House version.
See (i) below.	(i) Requires a district that authorizes a permit for historic or existing use to issue that type of permit based on evidence of the maximum amount of water beneficially used without waste during any one year before the district's creation, or before the district's rules were adopted or notice of such proposed rules was published and only for the purpose and amount beneficially used without waste in that year.	Same as House version.
(h) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is	(j) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is	(h) Same as House version, except prohibits a district from discriminating between land that is irrigated for production

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(i) Renders a district's permitting decision void if the decision is discriminatory under Subsection (h) and the district would have reached a different decision if it had treated land or wells on land enrolled or participating in a federal conservation program the same as land irrigated for production.

No equivalent provision.

No equivalent provision.

SENATE VERSION

irrigated for production and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(k) Renders a district's permitting decision void if the decision is discriminatory under Subsection (j) and the district would have reached a different decision if it had treated land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

(l) Requires the district, on the application of an affected landowner or the owner's lessee or assigns, to reconsider a decision that is void under Subsection (k) and base its decision on the equal treatment of land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program and land that is irrigated for production. Requires the district to render its decision and notify the applicant not later than the 90th day after the date the district receives the application.

(m) Requires a district that requires an applicant for a historic or existing use permit to pay a fee based on the amount of groundwater requested in the application to refund to the applicant, if the district grants a permit for a lesser amount of groundwater than requested, the difference between the fee paid for the requested amount of groundwater and the fee required for the amount of

CONFERENCE

and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(i) Same as House version, except references treating land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

Same as House version.

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

groundwater authorized by the permit granted. (FA1)

No equivalent provision.

SECTION __. Adds Section 36.1135, Water Code, Certain Historic and Existing Use Permits, to require a district to grant an application for a historic or existing use permit filed not later than January 1, 2004, in accordance with rules enacted not later than December 1, 2003, that authorize the issuance of a permit for an existing or historic use, and for which a hearing report was prepared by the presiding officer of the district and considered in a public hearing not later than June 1, 2005. Sets forth certain requirements for and restrictions on the district in issuing a permit for such application. Provides that this section does not apply to a district located in a single county whose boundaries were expanded by the legislature on or after January 1, 2003, and whose boundaries are not coextensive with the county in which the district is located. (FA1)

Same as House version.

No equivalent provision.

SECTION 4. Amends Section 36.116(b), Water Code, relating to the regulation of spacing and production, to allow a district, in promulgating any rule limiting groundwater production, to preserve existing use, as well as historic use, before the rule's effective date to the maximum extent practicable consistent with the district's comprehensive management plan, as provided by Section 36.113.

Same as House version.

SECTION 5. Requires the Hudspeth County Underground Water Conservation District No. 1, not later than the 90th

No equivalent provision.

SECTION 5. Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

day after the effective date of this Act, to amend to bring into compliance with Sections 36.002 and 36.101(a), Water Code, as amended by this Act, any rule enacted before the effective date of this Act that is void under Section 36.101(a), Water Code, as amended by this Act.

SECTION 6. (a) Provides that, except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a groundwater conservation district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) Provides that the changes in law made by this Act apply to: (1) an application filed with the Hudspeth County Underground Water Conservation District No. 1 that is pending on the effective date of this Act; or (2) a permit decision by the Hudspeth County Underground Water Conservation District No. 1 that is not final on the effective date of this Act.

SENATE VERSION

SECTION 5. (a) Provides that, except in any district located in a single county whose boundaries were expanded, but are not coextensive with the county in which the district is located, by an Act of the Texas Legislature in a regular session on or after 2003, the changes in law made under this legislation do not apply to: (1) an application or permit issued on the basis of an application filed before March 1, 2005; (2) a renewal or amendment of a permit issued on the basis of an application filed before March 1, 2005; (3) a permit issued under rules in effect as of March 1, 2005; (4) a renewal or amendment to a permit issued under rules in effect as of March 1, 2005. (FA2)

(b) Provides that Subsection (a) of this section does not limit the ability of a groundwater conservation district to adopt procedural rules governing notice, hearing, rulemaking, or permit processing in accordance with any law finally passed by the 79th Legislature, Regular Session, 2005, that governs notice, hearing, rulemaking, or permit processing procedures of groundwater conservation districts, if the procedural rules adopted do not conflict with a substantive district rule that existed on March 1, 2005.

CONFERENCE

SECTION 6. Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 7. Effective date.

SENATE VERSION

SECTION 6. Same as House version.

CONFERENCE

SECTION 7. Same as House version.

CONFERENCE COMMITTEE REPORT FORM

RECEIVED
SECRETARY OF SENATE

Austin, Texas

5 MAY 29 P6:35

May 29, 2005
Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

ADOPTED

31-0
MAY 29 2005 (K)

Patricia Spaw
Secretary of the Senate

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB2023 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]

Senator Archibator, Chair

[Signature]

Representative Puerto, Chair

[Signature]

Senator Harris

[Signature]

Representative Goren

[Signature]

Senator Jackson

Representative Hardscastle

[Signature]

Senator Leslie

Representative Hops

[Signature]

On the part of the Senate

Senator Rodia

On the part of the House

Representative Tracy King

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

Filed 5.29.05
6:13 P.M.

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 29, 2005
Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

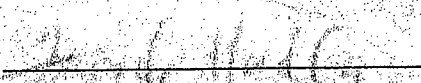
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB2423 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


Senator Armbrister, Chair


Senator Harris


Senator Jackson


Senator Lucio


On the part of the Senate

Senator Madia


Representative Puente, Chair


Representative Geren


Representative Hardeste


Representative Hope

On the part of the House

Representative Tracy King

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

Revised

CONFERENCE COMMITTEE REPORT

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

SECTION 4. Section 36.113, Water Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

1 (1) the district makes its decision in violation of
2 Subsection (h); and

3 (2) the district would have reached a different
4 decision if the district had treated land or wells on land that
5 was irrigated for production and enrolled or participating in a
6 federal conservation program the same as land irrigated for
7 production.

8 SECTION 5. Not later than the 90th day after the effective
9 date of this Act, the Hudspeth County Underground Water
10 Conservation District No. 1 shall amend to bring into compliance
11 with Sections 36.002 and 36.101(a), Water Code, as amended by
12 this Act, any rule enacted before the effective date of this Act
13 that is void under Section 36.101(a), Water Code, as amended by
14 this Act.

15 SECTION 6. (a) Except as provided by Section 5 and
16 Subsection (b) of this section, the changes in law made by this
17 Act apply only to a rule adopted by a groundwater conservation
18 district on or after the effective date of this Act or to a
19 permit issued or an application filed pursuant to a rule adopted
20 on or after the effective date of this Act.

21 (b) The changes in law made by this Act apply to:

22 (1) an application filed with the Hudspeth County
23 Underground Water Conservation District No. 1 that is pending on
24 the effective date of this Act; or

25 (2) a permit decision by the Hudspeth County
26 Underground Water Conservation District No. 1 that is not final
27 on the effective date of this Act.

1 SECTION 7. This Act takes effect September 1, 2005.

2

3

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Adds Section 36.001(4-a), Water Code, relating to definitions.

SECTION 2. Amends Section 36.002, Water Code, Ownership of Groundwater, to prohibit a rule promulgated by a district from discriminating between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land is enrolled or participating in a federal conservation program.

SECTION 3. Amends Section 36.101(a), Water Code, relating to district rulemaking power, to require that the rules developed by a district's board of directors not discriminate between land that is irrigated for production and land enrolled or participating in a federal conservation program. Provides that any rule that discriminates in such fashion is void.

SECTION 4. Adds Sections 36.113(h) and (i), Water Code, relating to permits for wells, as follows:

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version, except prohibits discrimination between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land *that was irrigated for production* is enrolled or participating in a federal conservation program.

No equivalent provision.

SECTION 3. Amends Sections 36.113(a), (c), (e), and (f), and adds (h) through (m), Water Code, as follows: (FA1)

(a) Adds a requirement for permits for operating wells as well as for permits for drilling, equipping, and completion of wells and other related activity.

(c) Allows a district to require that the permit application include documentation establishing the applicable authority to construct and operate a well for the proposed purpose of use, if the applicant is other than the owner of the property.

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

SECTION 3. Same as House version, except it requires rules developed by a district's board of directors not discriminate between land that is irrigated for production and land *that was irrigated for production and* enrolled or participating in a federal conservation program.

SECTION 4. Same as House version.

Same as House version

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
No equivalent provision.	(e) Allows a district to impose more restrictive permit conditions on new permit applications and increased use by existing users, as well as by historic users, under certain conditions.	Same as House version.
No equivalent provision.	(f) Makes a conforming change relating to the issuance of permits for operating wells.	Same as House version.
See (h) below.	(h) Requires a district to prohibit a change in the purpose and place of use under a permit that was granted for historic or existing use without a permit amendment. Requires the district to grant such permit amendment on application of the holder of a permit that was granted for historic or existing use, and makes the rules that apply to well operations under any other permit issued by the district not based on historic or existing use applicable also to operation of a well under the amended permit.	Same as House version.
See (i) below.	(i) Requires a district that authorizes a permit for historic or existing use to issue that type of permit based on evidence of the maximum amount of water beneficially used without waste during any one year before the district's creation, or before the district's rules were adopted or notice of such proposed rules was published and only for the purpose and amount beneficially used without waste in that year.	Same as House version.
(h) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is	(j) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is	(h) Same as House version, except prohibits a district from discriminating between land that is irrigated for production

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(i) Renders a district's permitting decision void if the decision is discriminatory under Subsection (h) and the district would have reached a different decision if it had treated land or wells on land enrolled or participating in a federal conservation program the same as land irrigated for production.

No equivalent provision.

No equivalent provision.

SENATE VERSION

irrigated for production and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(k) Renders a district's permitting decision void if the decision is discriminatory under Subsection (j) and the district would have reached a different decision if it had treated land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

(l) Requires the district, on the application of an affected landowner or the owner's lessee or assigns, to reconsider a decision that is void under Subsection (k) and base its decision on the equal treatment of land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program and land that is irrigated for production. Requires the district to render its decision and notify the applicant not later than the 90th day after the date the district receives the application.

(m) Requires a district that requires an applicant for a historic or existing use permit to pay a fee based on the amount of groundwater requested in the application to refund to the applicant, if the district grants a permit for a lesser amount of groundwater than requested, the difference between the fee paid for the requested amount of groundwater and the fee required for the amount of

CONFERENCE

and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(i) Same as House version, except references treating land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

Same as House version.

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

groundwater authorized by the permit granted. (FA1)

No equivalent provision.

SECTION __. Adds Section 36.1135, Water Code, Certain Historic and Existing Use Permits, to require a district to grant an application for a historic or existing use permit filed not later than January 1, 2004, in accordance with rules enacted not later than December 1, 2003, that authorize the issuance of a permit for an existing or historic use, and for which a hearing report was prepared by the presiding officer of the district and considered in a public hearing not later than June 1, 2005. Sets forth certain requirements for and restrictions on the district in issuing a permit for such application. Provides that this section does not apply to a district located in a single county whose boundaries were expanded by the legislature on or after January 1, 2003, and whose boundaries are not coextensive with the county in which the district is located. (FA1)

Same as House version.

No equivalent provision.

SECTION 4. Amends Section 36.116(b), Water Code, relating to the regulation of spacing and production, to allow a district, in promulgating any rule limiting groundwater production, to preserve existing use, as well as historic use, before the rule's effective date to the maximum extent practicable consistent with the district's comprehensive management plan, as provided by Section 36.113.

Same as House version.

SECTION 5. Requires the Hudspeth County Underground Water Conservation District No. 1, not later than the 90th

No equivalent provision.

SECTION 5. Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

day after the effective date of this Act, to amend to bring into compliance with Sections 36.002 and 36.101(a), Water Code, as amended by this Act, any rule enacted before the effective date of this Act that is void under Section 36.101(a), Water Code, as amended by this Act.

SECTION 6. (a) Provides that, except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a groundwater conservation district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) Provides that the changes in law made by this Act apply to: (1) an application filed with the Hudspeth County Underground Water Conservation District No. 1 that is pending on the effective date of this Act; or (2) a permit decision by the Hudspeth County Underground Water Conservation District No. 1 that is not final on the effective date of this Act.

SENATE VERSION

SECTION 5. (a) Provides that, except in any district located in a single county whose boundaries were expanded, but are not coextensive with the county in which the district is located, by an Act of the Texas Legislature in a regular session on or after 2003, the changes in law made under this legislation do not apply to: (1) an application or permit issued on the basis of an application filed before March 1, 2005; (2) a renewal or amendment of a permit issued on the basis of an application filed before March 1, 2005; (3) a permit issued under rules in effect as of March 1, 2005; (4) a renewal or amendment to a permit issued under rules in effect as of March 1, 2005. (FA2)

(b) Provides that Subsection (a) of this section does not limit the ability of a groundwater conservation district to adopt procedural rules governing notice, hearing, rulemaking, or permit processing in accordance with any law finally passed by the 79th Legislature, Regular Session, 2005, that governs notice, hearing, rulemaking, or permit processing procedures of groundwater conservation districts, if the procedural rules adopted do not conflict with a substantive district rule that existed on March 1, 2005.

CONFERENCE

SECTION 6. Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 7. Effective date.

SECTION 6. Same as House version.

SECTION 7. Same as House version.

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

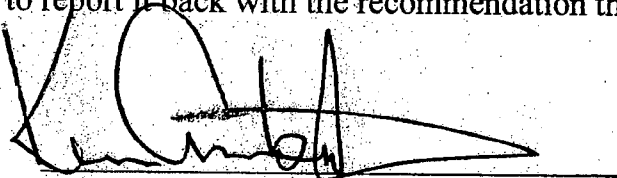
May 29, 2005
Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB2423 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

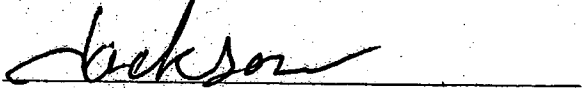


Senator Armbrister, Chair



Representative Puente, Chair

Senator Harris



Senator Jackson

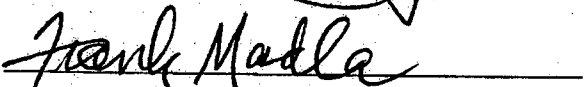
Representative Geren



Representative Hardcastle

Senator Lucio

Representative Hope



On the part of the Senate

Senator Madla

On the part of the House

Representative Tracy King

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

Revised

CORRECTED

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2423

A BILL TO BE ENTITLED

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

1 SECTION 3. Section 36.101(a), Water Code, is amended to
2 read as follows:

3 (a) A district may make and enforce rules, including rules
4 limiting groundwater production based on tract size or the
5 spacing of wells, to provide for conserving, preserving,
6 protecting, and recharging of the groundwater or of a
7 groundwater reservoir or its subdivisions in order to control
8 subsidence, prevent degradation of water quality, or prevent
9 waste of groundwater and to carry out the powers and duties
10 provided by this chapter. During the rulemaking process the
11 board shall consider all groundwater uses and needs and shall
12 develop rules which are fair and impartial and that do not
13 discriminate between land that is irrigated for production and
14 land that was irrigated for production and enrolled or
15 participating in a federal conservation program. Any rule of a
16 district that discriminates between land that is irrigated for
17 production and land that was irrigated for production and
18 enrolled or participating in a federal conservation program is
19 void.

20 SECTION 4. Section 36.113, Water Code, is amended by
21 adding Subsections (h) and (i) to read as follows:

22 (h) In issuing a permit for an existing or historic use, a
23 district may not discriminate between land that is irrigated for
24 production and land or wells on land that was irrigated for
25 production and enrolled or participating in a federal
26 conservation program.

27 (i) A permitting decision by a district is void if:

1 (1) the district makes its decision in violation of
2 Subsection (h); and

3 (2) the district would have reached a different
4 decision if the district had treated land or wells on land that
5 was irrigated for production and enrolled or participating in a
6 federal conservation program the same as land irrigated for
7 production.

8 SECTION 5. Not later than the 90th day after the effective
9 date of this Act, the Hudspeth County Underground Water
10 Conservation District No. 1 shall amend to bring into compliance
11 with Sections 36.002 and 36.101(a), Water Code, as amended by
12 this Act, any rule enacted before the effective date of this Act
13 that is void under Section 36.101(a), Water Code, as amended by
14 this Act.

15 SECTION 6. (a) Except as provided by Section 5 and
16 Subsection (b) of this section, the changes in law made by this
17 Act apply only to a rule adopted by a groundwater conservation
18 district on or after the effective date of this Act or to a
19 permit issued or an application filed pursuant to a rule adopted
20 on or after the effective date of this Act.

21 (b) The changes in law made by this Act apply to:

22 (1) an application filed with the Hudspeth County
23 Underground Water Conservation District No. 1 that is pending on
24 the effective date of this Act; or

25 (2) a permit decision by the Hudspeth County
26 Underground Water Conservation District No. 1 that is not final
27 on the effective date of this Act.

1 SECTION 7. This Act takes effect September 1, 2005.

2

3

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Adds Section 36.001(4-a), Water Code, relating to definitions.

SECTION 2. Amends Section 36.002, Water Code, Ownership of Groundwater, to prohibit a rule promulgated by a district from discriminating between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land is enrolled or participating in a federal conservation program.

SECTION 3. Amends Section 36.101(a), Water Code, relating to district rulemaking power, to require that the rules developed by a district's board of directors not discriminate between land that is irrigated for production and land enrolled or participating in a federal conservation program. Provides that any rule that discriminates in such fashion is void.

SECTION 4. Adds Sections 36.113(h) and (i), Water Code, relating to permits for wells, as follows:

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version, except prohibits discrimination between owners of land that is irrigated for production and owners of land or their lessees and assignees whose land *that was irrigated for production* is enrolled or participating in a federal conservation program.

No equivalent provision.

SECTION 3. Amends Sections 36.113(a), (c), (e), and (f), and adds (h) through (m), Water Code, as follows: (FA1)

(a) Adds a requirement for permits for operating wells as well as for permits for drilling, equipping, and completion of wells and other related activity.

(c) Allows a district to require that the permit application include documentation establishing the applicable authority to construct and operate a well for the proposed purpose of use, if the applicant is other than the owner of the property.

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

SECTION 3. Same as House version, except it requires rules developed by a district's board of directors not discriminate between land that is irrigated for production and land *that was irrigated for production and* enrolled or participating in a federal conservation program.

SECTION 4. Same as House version.

Same as House version

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

(e) Allows a district to impose more restrictive permit conditions on new permit applications and increased use by existing users, as well as by historic users, under certain conditions.

Same as House version.

No equivalent provision.

(f) Makes a conforming change relating to the issuance of permits for operating wells.

Same as House version.

See (h) below.

(h) Requires a district to prohibit a change in the purpose and place of use under a permit that was granted for historic or existing use without a permit amendment. Requires the district to grant such permit amendment on application of the holder of a permit that was granted for historic or existing use, and makes the rules that apply to well operations under any other permit issued by the district not based on historic or existing use applicable also to operation of a well under the amended permit.

Same as House version.

See (i) below.

(i) Requires a district that authorizes a permit for historic or existing use to issue that type of permit based on evidence of the maximum amount of water beneficially used without waste during any one year before the district's creation, or before the district's rules were adopted or notice of such proposed rules was published and only for the purpose and amount beneficially used without waste in that year.

Same as House version.

(h) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is

(j) Prohibits a district, in issuing a permit for an existing or historic use, from discriminating between land that is

(h) Same as House version, except prohibits a district from discriminating between land that is irrigated for production

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

irrigated for production and land or wells on land enrolled or participating in a federal conservation program.

(i) Renders a district's permitting decision void if the decision is discriminatory under Subsection (h) and the district would have reached a different decision if it had treated land or wells on land enrolled or participating in a federal conservation program the same as land irrigated for production.

No equivalent provision.

No equivalent provision.

SENATE VERSION

irrigated for production and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(k) Renders a district's permitting decision void if the decision is discriminatory under Subsection (j) and the district would have reached a different decision if it had treated land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

(l) Requires the district, on the application of an affected landowner or the owner's lessee or assigns, to reconsider a decision that is void under Subsection (k) and base its decision on the equal treatment of land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program and land that is irrigated for production. Requires the district to render its decision and notify the applicant not later than the 90th day after the date the district receives the application.

(m) Requires a district that requires an applicant for a historic or existing use permit to pay a fee based on the amount of groundwater requested in the application to refund to the applicant, if the district grants a permit for a lesser amount of groundwater than requested, the difference between the fee paid for the requested amount of groundwater and the fee required for the amount of

CONFERENCE

and land or wells on land *that was irrigated for production and* enrolled or participating in a federal conservation program.

(i) Same as House version, except references treating land *that was irrigated for production and* enrolled or participating in a federal conservation program the same as land irrigated for production.

Same as House version.

Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

groundwater authorized by the permit granted. (FA1)

No equivalent provision.

SECTION __. Adds Section 36.1135, Water Code, Certain Historic and Existing Use Permits, to require a district to grant an application for a historic or existing use permit filed not later than January 1, 2004, in accordance with rules enacted not later than December 1, 2003, that authorize the issuance of a permit for an existing or historic use, and for which a hearing report was prepared by the presiding officer of the district and considered in a public hearing not later than June 1, 2005. Sets forth certain requirements for and restrictions on the district in issuing a permit for such application. Provides that this section does not apply to a district located in a single county whose boundaries were expanded by the legislature on or after January 1, 2003, and whose boundaries are not coextensive with the county in which the district is located. (FA1)

Same as House version.

No equivalent provision.

SECTION 4. Amends Section 36.116(b), Water Code, relating to the regulation of spacing and production, to allow a district, in promulgating any rule limiting groundwater production, to preserve existing use, as well as historic use, before the rule's effective date to the maximum extent practicable consistent with the district's comprehensive management plan, as provided by Section 36.113.

Same as House version.

SECTION 5. Requires the Hudspeth County Underground Water Conservation District No. 1, not later than the 90th

No equivalent provision.

SECTION 5. Same as House version.

House Bill 2423
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

day after the effective date of this Act, to amend to bring into compliance with Sections 36.002 and 36.101(a), Water Code, as amended by this Act, any rule enacted before the effective date of this Act that is void under Section 36.101(a), Water Code, as amended by this Act.

SECTION 6. (a) Provides that, except as provided by Section 5 and Subsection (b) of this section, the changes in law made by this Act apply only to a rule adopted by a groundwater conservation district on or after the effective date of this Act or to a permit issued or an application filed pursuant to a rule adopted on or after the effective date of this Act.

(b) Provides that the changes in law made by this Act apply to: (1) an application filed with the Hudspeth County Underground Water Conservation District No. 1 that is pending on the effective date of this Act; or (2) a permit decision by the Hudspeth County Underground Water Conservation District No. 1 that is not final on the effective date of this Act.

SENATE VERSION

SECTION 5. (a) Provides that, except in any district located in a single county whose boundaries were expanded, but are not coextensive with the county in which the district is located, by an Act of the Texas Legislature in a regular session on or after 2003, the changes in law made under this legislation do not apply to: (1) an application or permit issued on the basis of an application filed before March 1, 2005; (2) a renewal or amendment of a permit issued on the basis of an application filed before March 1, 2005; (3) a permit issued under rules in effect as of March 1, 2005; (4) a renewal or amendment to a permit issued under rules in effect as of March 1, 2005. (FA2)

(b) Provides that Subsection (a) of this section does not limit the ability of a groundwater conservation district to adopt procedural rules governing notice, hearing, rulemaking, or permit processing in accordance with any law finally passed by the 79th Legislature, Regular Session, 2005, that governs notice, hearing, rulemaking, or permit processing procedures of groundwater conservation districts, if the procedural rules adopted do not conflict with a substantive district rule that existed on March 1, 2005.

CONFERENCE

SECTION 6. Same as House version.

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Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 7. Effective date.

SENATE VERSION

SECTION 6. Same as House version.

CONFERENCE

SECTION 7. Same as House version.

F

ENROLLED

H.B. No. 2423

AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.001, Water Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Federal conservation program" means the Conservation Reserve Program of the United States Department of Agriculture, or any successor program.

SECTION 2. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.

SECTION 3. Section 36.101(a), Water Code, is amended to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. During the rulemaking process the board shall consider all groundwater uses and needs and shall develop rules which are fair and impartial and that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program. Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

SECTION 4. Section 36.113, Water Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) In issuing a permit for an existing or historic use, a district may not discriminate between land that is irrigated for production and land or wells on land that was irrigated for production and enrolled or participating in a federal conservation program.

(i) A permitting decision by a district is void if:

(1) the district makes its decision in violation of Subsection (h); and

(2) the district would have reached a different decision if the district had treated land or wells on land that was

1 irrigated for production and enrolled or participating in a federal
2 conservation program the same as land irrigated for production.

3 SECTION 5. Not later than the 90th day after the effective
4 date of this Act, the Hudspeth County Underground Water
5 Conservation District No. 1 shall amend to bring into compliance
6 with Sections 36.002 and 36.101(a), Water Code, as amended by this
7 Act, any rule enacted before the effective date of this Act that is
8 void under Section 36.101(a), Water Code, as amended by this Act.

9 SECTION 6. (a) Except as provided by Section 5 and
10 Subsection (b) of this section, the changes in law made by this Act
11 apply only to a rule adopted by a groundwater conservation district
12 on or after the effective date of this Act or to a permit issued or
13 an application filed pursuant to a rule adopted on or after the
14 effective date of this Act.

15 (b) The changes in law made by this Act apply to:

16 (1) an application filed with the Hudspeth County
17 Underground Water Conservation District No. 1 that is pending on
18 the effective date of this Act; or

19 (2) a permit decision by the Hudspeth County
20 Underground Water Conservation District No. 1 that is not final on
21 the effective date of this Act.

22 SECTION 7. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2423 was passed by the House on April 26, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2423 on May 26, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2423 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 2423

I certify that H.B. No. 2423 was passed by the Senate, with amendments, on May 23, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2423 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

President of the Senate

Speaker of the House

I certify that H.B. No. 2423 was passed by the House on
(1)

April 26, 2005, by a non-record vote; that the
(2)

House refused to concur in Senate amendments to H.B. No. 2423 on
May 26, 2005, and requested the appointment
(3)

of a conference committee to consider the differences between the
two houses; and that the House adopted the conference committee report
on H.B. No. 2423 on May 29, 2005, by a
(4)

✓
non-record vote.

Chief Clerk of the House

**** Preparation: CT41

I certify that H.B. No. 2423 was passed by the Senate, with
(1)

amendments, on May 23, 2005, by the following
(2)

vote: Yeas 31, Nays 0
(3) (4)

at the request of the House, the Senate appointed a conference
committee to consider the differences between the two houses;
and that the Senate adopted the conference committee report on
H.B. No. 2423 on May 29, 2005, by the following vote:
(5)

Yeas 31, Nays 0
(6) (7)

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT44

H.B. No. 2423

By

Robert R. Priebe

A BILL TO BE ENTITLED
AN ACT

relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

MAR 09 2005

Filed with the Chief Clerk

MAR 15 2005

Read first time and referred to Committee on Natural Resources

APR 07 2005

Reported favorably (as amended)
(~~unfavorably~~)

APR 18 2005

Sent to Committee on (Calendars)
(~~Local & Consent Calendars~~)

APR 25 2005

Read second time (~~amended~~) (amended); passed to third reading (~~failed~~) by a (non-record vote)
(~~record vote of~~ yeas, nays, present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of yeas, nays, present, not voting

APR 26 2005

Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote)
(~~record vote of~~ yeas, nays, present, not voting)

Engrossed

APR 27 2005

Sent to Senate

Robert Haney
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

APR 27 2005

Received from the House

APR 29 2005

Read and referred to Committee on NATURAL RESOURCES

Reported favorably

MAY 20 2005

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

MAY 23 2005

Senate and Constitutional Rules to permit consideration suspended by BY A VIVA VOCE VOTE
(~~unanimous consent~~)
(yeas, nays)

MAY 23 2005

Read second time, Amended, and passed to third reading by (unanimous consent)
(a viva voce vote)
(yeas, nays)

MAY 23 2005

Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 23 2005

Read third time, Amended, and passed by a (viva voce vote)
(31 yeas, 0 nays)

May 23, 2005

Returned to the House

Latey Spaw
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 23 2005

Final passage reconsidered, read third time, amended and passed 31, 0 nays.

MAY 23 2005

Final passage again reconsidered

MAY 23 2005

Vote on Floor Amendment 3 on Third Reading, reconsidered

MAY 23 2005

Floor amendment #3 withdrawn

MAY 23 2005

Again, finally passed 31-0

MAY 23 2005

Returned from the Senate (as substituted)
(with amendments)

House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

MAY 26 2005

House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (~~record vote of _____ yeas, _____ nays, _____ present, not voting~~)

MAY 26 2005

House conferees appointed: Puente, Chair; Gerren,
Hope, King of Zavalá, Hardcastle

MAY 28 2005

Senate granted House request. Senate conferees appointed: Armbrister, Chair;
Harris, Jackson, Wood, Madlax

MAY 29 2005

Conference committee report adopted (~~rejected~~) by the House by a (non-record vote)
(~~record vote of _____ yeas, _____ nays, _____ present, not voting~~)

MAY 29 2005

Conference committee report adopted (~~rejected~~) by the Senate by a (~~non-record vote~~)
(record vote of 31 yeas, 10 nays)

05 APR 17 PM 8:59

HOUSE OF REPRESENTATIVES

05 MAY 24 AM 2:29

HOUSE OF REPRESENTATIVES